

# Franchising’s Death Penalty— The Dreaded Stop Order

*Daniel J. Oates*

There are few things that inspire more fear in franchised businesses than the stop order. On the surface, that fear is justifiable. The stop order is one of the most draconian and effective tools in the regulatory arsenal to ensure compliance with franchise law. A stop order, issued by a state regulator, immediately halts all ongoing franchise sales activities until the franchisor comes into compliance with state law.<sup>1</sup> And due to the close ties between states,<sup>2</sup> one state’s stop order may propagate into other jurisdictions. As a result, franchisors hit with a single state’s stop order may be faced with what amounts to an overnight and indefinite nationwide injunction on the sale of franchises.



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This fear, however, does not often materialize. Despite regulators having broad authority to issue stop orders, they appear to use these powers sparingly, reserving them for the most heinous violations. Consequently, franchisors reluctant to oppose regulatory demands out of fear of a possible stop order may have greater latitude than they think. This article examines stop orders: what they are, how they are issued, common pitfalls that lead to stop orders, and how franchisors can redress them.

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1. See, e.g., CAL. CORP. CODE § 31117 (“[T]he order will remain in effect until it is modified or vacated by the commissioner.”).

2. Every one of the registration states is a member of the North American Securities Administrators Association (NASAA). While “NASAA has no direct authority over franchising in the United States. . . its recommendations and policy initiatives have traditionally been given great weight by the states that regulate franchises.” Caroline B. Fichter & Frank J. Sciremammano, *The North American Securities Administrators Association’s Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgements*, 42 FRANCHISE L.J. 351, 355 (2023).

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## A. What Are Stop Orders?

Fourteen states require franchisors to register with the state before they can sell or offer franchises.<sup>3</sup> Statutes in each of these states grant regulators the authority to issue so-called “stop orders.”<sup>4</sup> A stop order is a direction by the applicable state regulatory agency to a franchisor or a prospective franchisor that its franchise registration or application is suspended or revoked.<sup>5</sup> Once a stop order goes into effect, the franchisor cannot sell or offer franchises in that state until the stop order is resolved.

To issue a stop order, regulators must conclude that (a) the order is in the public interest; and (b) one or more additional grounds are satisfied, such as:

- The registration application is materially incomplete, or contains materially false or misleading information;<sup>6</sup>
- The franchisor has violated some lawful condition of the statute;<sup>7</sup>
- A court or agency has issued an injunction against the franchisor;<sup>8</sup>
- The franchise system is determined to be an illegal business enterprise;<sup>9</sup>
- The franchise offering has or may work a fraud on purchasers;<sup>10</sup>

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3. Karen B. Satterlee & Leslie D. Curran, *Exemption-Based Franchising: Are You Playing in a Minefield?*, 28 FRANCHISE L.J. 191, 241 n.26 (2009) (“The franchise registration states are California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin.”).

4. CAL. CORP. CODE § 31115; HAW. REV. STAT. § 482E-8; 815 ILL. COMP. STAT. 705/22; IND. CODE § 23-2-2.5-14; MD. CODE ANN., BUS. REG. § 14-221; MICH. ADMIN. CODE r. 445.704; MINN. STAT. § 80C.12; N.Y. GEN. BUS. LAW § 683(7); N.D. CENT. CODE § 51-19-09; R.I. GEN. LAWS § 19-28.1-18; S.D. CODIFIED LAWS § 37-5B-41; VA. CODE ANN. § 13.1-562; WASH. REV. CODE § 19.100.120; WIS. STAT. § 553.28.

5. WASH. REV. CODE § 19.100.120.

6. HAW. REV. STAT. § 482E-8(a)(1); 815 ILL. COMP. STAT. 705/22(a)(2)–(3); MD. CODE ANN., BUS. REG. § 14-221(4)–(5); MICH. ADMIN. CODE r. 445.704(a); N.Y. GEN. BUS. LAW § 683(7)(c); R.I. GEN. LAWS § 19-28.1-18(a)(2)–(3); WASH. REV. CODE § 19.100.120(1).

7. CAL. CORP. CODE § 31115(a); HAW. REV. STAT. § 482E-8(a)(2); 815 ILL. COMP. STAT. 705/22(a)(1); IND. CODE § 23-2-2.5-14(a)(1); MD. CODE ANN., BUS. REG. § 14-221(1); MICH. ADMIN. CODE r. 445.704(b); MINN. STAT. § 80C.12 subdiv. 1(a); N.Y. GEN. BUS. LAW § 683(7)(a); N.D. CENT. CODE § 51-19-09(1)(a); S.D. CODIFIED LAWS § 37-5B-41(1); VA. CODE ANN. § 13.1-562(A)(6); WASH. REV. CODE § 19.100.120(2). Wisconsin’s prohibition on this section is limited to the franchisor’s failure to provide a Franchise Disclosure Document within the time prescribed by the statute. WIS. STAT. § 553.28(1)(a).

8. HAW. REV. STAT. § 482E-8(a)(3); MICH. ADMIN. CODE r. 445.704(d); N.Y. GEN. BUS. LAW § 683(7)(f); WASH. REV. CODE § 19.100.120(3).

9. CAL. CORP. CODE § 31115(e); HAW. REV. STAT. § 482E-8(a)(4); 815 ILL. COMP. STAT. 705/22(a)(9); MINN. STAT. § 80C.12 subdiv. 1(f); N.Y. GEN. BUS. LAW § 683(7)(d); N.D. CENT. CODE § 51-19-09(1)(h); R.I. GEN. LAWS § 19-28.1-18(a)(8); S.D. CODIFIED LAWS § 37-5B-41(6); WASH. REV. CODE § 19.100.120(4).

10. CAL. CORP. CODE § 31115(b); HAW. REV. STAT. § 482E-8(a)(5); 815 ILL. COMP. STAT. 705/22(a)(4)–(5); IND. CODE § 23-2-2.5-14(a)(2); MD. CODE ANN., BUS. REG. § 14-221(2), (6); MINN. STAT. § 80C.12 subdiv. 1(b)–(c); N.Y. GEN. BUS. LAW § 683(7)(b); N.D. CENT. CODE § 51-19-09(1)(b)–(c); R.I. GEN. LAWS § 19-28.1-18(a)(4)–(5); S.D. CODIFIED LAWS § 37-5B-41(2)–(3); VA. CODE ANN. § 13.1-562(A)(1); WASH. REV. CODE § 19.100.120(5); WIS. STAT. § 553.28(1)(b). Michigan does not expressly include fraud as an accepted ground for issuing a stop order, but does prohibit fraudulent like conduct, such as recommending to a prospect a franchise that

- The franchisor's principals have been convicted of a felony, or held liable in a civil action, or by a public agency;<sup>11</sup>
- The franchise agreement contains a provision that is contrary to law, unfair, inequitable, or unjust;<sup>12</sup>
- The franchisor is the subject of a stop order issued by another state;<sup>13</sup>
- The franchisor has demonstrated inadequate financial arrangements to perform under the franchise agreement;<sup>14</sup>
- The franchisor has used improper advertising;<sup>15</sup>
- The franchisor has failed to comply with an information request, rule, or order of the state regulator; or<sup>16</sup>
- The franchisor has failed to pay required fees.<sup>17</sup>

Notably, the various express grounds for issuance of a stop order do not overlap among all states. This divergence means that the issuance of an injunction against a franchisor may be grounds for a stop order in Hawaii, Michigan, New York, and Washington, but not in California.<sup>18</sup> Regulators from these states, however, can typically punish the same conduct despite these drafting discrepancies for at least two reasons. First, regulators in general may adopt a broad interpretation of their authority to take administrative actions, especially when they deem it to be in the “public interest.”<sup>19</sup> Second, franchising regulators can apply broad catch-all provisions—such as the prohibition on violations of the franchise statute generally, or violations of the agency's interpretations, opinions, or orders—as grounds for issuing

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is not suitable for that prospect, failing to disclose conflicts of interest, and borrowing money from the franchisee. MICH. ADMIN. CODE r. 445.704(g)(i)–(iv).

11. CAL. CORP. CODE § 31115(d); 815 ILL. COMP. STAT. 705/22(a)(6); IND. CODE § 23-2-2.5-14(a)(4); MD. CODE ANN., BUS. REG. § 14-221(3); MICH. ADMIN. CODE r. 445.704(c); MINN. STAT. § 80C.12 subdiv. 1(d); N.Y. GEN. BUS. LAW § 683(7)(e); N.D. CENT. CODE § 51-19-09(1)(d); R.I. GEN. LAWS § 19-28.1-18(a)(6); S.D. CODIFIED LAWS § 37-5B-41(4); VA. CODE ANN. § 13.1-562(A)(4); WIS. STAT. § 553.28(1)(d).

12. CAL. CORP. CODE § 31115(f); MINN. STAT. § 80C.1 subdiv. 1(g); N.D. CENT. CODE § 51-19-09(1)(g), (j).

13. MICH. ADMIN. CODE r. 445.704(f).

14. HAW. REV. STAT. § 482E-8(a)(6); MD. CODE ANN., BUS. REG. § 14-221(7); MICH. ADMIN. CODE r. 445.704(h)–(i); MINN. STAT. § 80C.12 subdiv. 1(e); N.D. CENT. CODE § 51-19-09(1)(g); R.I. GEN. LAWS § 19-28.1-18(a)(9); S.D. CODIFIED LAWS § 37-5B-41(5); VA. CODE ANN. § 13.1-562(A)(2)–(3).

15. N.D. CENT. CODE § 51-19-09(1)(f); R.I. GEN. LAWS § 19-28.1-18(a)(7).

16. CAL. CORP. CODE § 31115(a), (c); IND. CODE § 23-2-2.5-14(a)(3); R.I. GEN. LAWS § 19-28.1-18(a)(1); VA. CODE ANN. § 13.1-562(A)(5); WASH. REV. CODE § 19.100.120(6).

17. MICH. ADMIN. CODE r. 445.704(k); N.Y. GEN. BUS. LAW § 683(7)(g); N.D. CENT. CODE § 51-19-09(1)(e); WASH. REV. CODE § 19.100.120(7); WIS. STAT. § 553.28(1)(e).

18. Compare HAW. REV. STAT. § 482E-8(a)(3), MICH. ADMIN. CODE r. 445.704(d), N.Y. GEN. BUS. LAW § 683(7)(f), and WASH. REV. CODE § 19.100.120(3), with CAL. CORP. CODE § 31115.

19. See generally Christine Masse et al., *The Turbulent History of Cannabis Regulatory Enforcement in Washington State*, 31 CORNELL J.L. & PUB. POL'Y 121 (2021) (discussing Washington State Liquor and Cannabis Board's broad application of statutes and administrative rules).

a stop order when a more specific provision does not exist.<sup>20</sup> For example, Minnesota law authorizes stop orders if provisions of the franchise agreement are “unfair or inequitable to franchisees.”<sup>21</sup> Although Washington’s stop order authority does not contain the same express grounds, Washington does authorize a stop order if the franchisor violates Washington’s Franchise Investment Protection Act,<sup>22</sup> which similarly prohibits unfair or deceptive acts, including imposing unreasonable and unnecessary standards on franchisees.<sup>23</sup> In this way, a Washington regulator might conclude that the same inequitable franchise agreement provisions that warrant a stop order under Minnesota’s statute might also satisfy Washington’s statute. In other words, franchisors should not blindly assume that simply because different states have different grounds for stop orders, that the differences will automatically save them from a daisy chain of stop orders enjoining sales across multiple states.<sup>24</sup>

None of the statutes in question defines what constitutes the “public interest” for purposes of issuing a stop order. In the author’s experience, regulators in other contexts frequently contend that they have discretion to determine what constitutes the “public interest,”<sup>25</sup> and courts and administrative agencies generally defer to the agency’s interpretation of that phrase. As a result, the “public interest” determination has historically been something of a foregone conclusion, with courts and administrative judges deferring to the agency’s conclusion, without any discussion. That may no longer be the case, however, as the law on judicial deference afforded to agency interpretations is currently in flux, at least at the federal level.<sup>26</sup> In the future, courts may be less likely to rubber-stamp agency public-interest findings without supporting factual determinations.

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20. See, e.g., *In re Life Call Sys., Inc.*, 1988 WL 422902 (Ind. Div. Sec. Mar. 22, 1988) (imposing stop order following franchisor’s filing for bankruptcy based on general disclosure obligations, where statute did not grant authority, as in other states, to stop registration based on inadequate finances).

21. MINN. STAT. § 80C.12 subd. 1(g).

22. WASH. REV. CODE § 19.100.120(2).

23. *Id.* § 19.100.180(2)(h).

24. As a matter of statutory interpretation, the differences between the statutes should be meaningful; otherwise, the language would amount to mere surplusage. *United States v. Palomares*, 52 F.4th 640, 644 (5th Cir. 2022) (“The canon against surplusage is the interpretive principal that courts prefer interpretations that give independent legal effect to every word and clause in a statute.”) (citing *Williams v. Taylor*, 529 U.S. 362, 404 (2000)). However, it is impossible to conclude whether the distinctions are meaningful in a vacuum. The facts and circumstances of each regulatory application of the statute are critical to making this determination. Franchisors seeking to challenge issued stop orders as beyond the scope of the agency’s authority will need to carefully parse the specific statute and facts of their case to determine whether a challenge is viable.

25. See *Masse et al.*, *supra* note 19, at 141 (noting that the agency “takes the position that virtually all violations of its rules constitute a threat to public safety and interfere with its ability to regulate the industry”).

26. See, e.g., *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402, 412–13 (2024) (holding that agencies are no longer entitled to deference in interpreting legal questions, and directing the judiciary to exercise independent judgment in evaluating congressional intent of statutes, while still affording “due respect” to the agency’s position).

Once issued, stop orders go into effect immediately, last indefinitely,<sup>27</sup> and require the franchisor to pause all sales and offers.<sup>28</sup> Some states expressly permit entry of a reciprocal stop order in the event that one is issued elsewhere,<sup>29</sup> and practically speaking, other state regulators can use the factual allegations contained in another state's stop order to justify their own issuance of a stop order.<sup>30</sup> As explored in the next section, the potential to propagate makes stop orders a powerful tool to punish or deter.

## B. When Are Stop Orders Typically Issued?

Based on the author's comprehensive review of stop orders issued across all registration states, regulators do not appear to have abused their power to issue stop orders. Rather, regulators generally issue them sparingly, not as indiscriminate displays of state power. Most stop orders fall into a handful of categories: (1) unregistered franchise sales;<sup>31</sup> (2) fraud, false, or misleading registration applications;<sup>32</sup> (3) incomplete registration applications;<sup>33</sup>

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27. See, e.g., WASH. REV. CODE § 19.100.130 (noting that “the order will remain in effect until it is modified or vacated by the director. . .”).

28. See, e.g., WASH. REV. CODE § 19.100.120 (suspending effectiveness of registration); *id.* § 19.100.020(1) (prohibiting sales, or offers to sell, of unregistered franchises).

29. MICH. ADMIN. CODE r. 445.704(f).

30. *In re Burgerim USA, Inc.*, 2020 WL 1234656 (Ind. Div. Sec. Nov. 22, 2024) (citing to stop orders in Washington and Maryland as grounds for issuance of stop order in Indiana); *In re Why Weight Inc.*, 2004 WL 2884165 (Ind. Div. Sec. Oct. 15, 2004) (citing California stop order as grounds for issuance of stop order in Indiana); *In re Burgerim*, 2020 WL 416807 (Wash. Sec. Div. Jan. 14, 2020) (citing Maryland stop order as grounds for issuance of stop order in Washington); *In re Salsa's Franchise Dev. Corp.*, 1993 WL 723838 (Wash. Sec. Div. Mar. 19, 1993) (citing Wisconsin stop order as grounds for issuance of stop order in Washington); *In re 360 Painting, LLC*, 2023 WL 3433566 (Md. Sec. Div. Apr. 19, 2023) (citing California stop order as grounds for issuance of stop order in Washington).

31. *In re The Maid Brigade Sys., Inc.*, 1993 WL 657678 (Ind. Div. Sec. Mar. 23, 1993) (unregistered franchise sale); *In re Beverly Hills Weight Loss Clinics Int'l, Inc.*, 1989 WL 446131 (Ind. Div. Sec. Dec. 21, 1989) (unregistered franchise sales); *In re Gaming Goat, Inc.*, 2019 WL 4454339 (Minn. Dept. Comm. May 30, 2019) (unregistered franchise sales); *In re Ultimate Franchises, Inc.*, 2019 WL 1552006 (Minn. Dept. Comm. Jan. 4, 2019) (unregistered franchise sales); *In re VR Junkies Franchise, LLC*, 2018 WL 9787182 (Minn. Dept. Comm. July 24, 2018) (unregistered franchise sales); *In re 1073355 Ontario Ltd.*, 2018 WL 9787166 (Minn. Dept. Comm. June 25, 2018) (unregistered franchise sales); *In re Good Feet Worldwide, Inc.*, 2003 WL 26069481 (Wash. Dept. Fin. Inst. July 8, 2003) (unregistered franchise sales); *In re Fancy Town*, 2003 WL 26069460 (Wash. Dept. Fin. Inst. Feb. 4, 2003) (unregistered franchise sales).

32. *In re Why Weight Women's Total Fitness, Inc.*, 2006 WL 6618519 (Cal. Dept. Corp. Jan. 4, 2006) (false and misleading statements in FDD relating to criminal conviction for mail fraud); *In re Healthwest, Inc.*, 2005 WL 6514848 (Cal. Dept. Corp. July 7, 2005) (failure to disclose lawsuits for unfair business practices, false advertising, and fraud); *In re Network in Action*, 2024 WL 5317413 (Wash. Sec. Div. Nov. 22, 2024) (misrepresentations and omissions in the sale of franchises, among a host of other violations); *In re Childcare Seekers One Stop, Inc.*, 2003 WL 26069472 (Wash. Dept. Fin. Inst. Feb. 3, 2003) (misrepresentations contained in offering circular); *In re Poochies*, 2000 WL 428666 (Wash. Sec. Div. Apr. 13, 2000) (misrepresentations contained in offering circular); *In re Am. Shaman Franchise Sys. LLC*, 2021 WL 4478165 (Wis. Fin. Inst. May 5, 2021) (failure to disclose principal's bankruptcy filing).

33. *In re Cassano's, Inc.*, 1979 WL 42273 (Ind. Div. Sec. July 16, 1979) (failing to complete registration application); *In re Sports Dog, Inc.*, 1993 WL 723839 (Wash. Sec. Div. Mar. 3, 1993)

(4) undisclosed criminal convictions or judgments;<sup>34</sup> or (5) severely deteriorated franchisor financial condition.<sup>35</sup> Notably absent from this list are some of the broader categories of grounds for issuance of stop orders, such as unfair or unjust franchise agreement provisions, or improper advertising conduct.

Accordingly, despite some states authorizing the broad use of stop orders to remedy an array of different issues, regulators generally reserve them for extreme misconduct or failure to follow basic statutory requirements such as registration. Stop orders that fell outside these categories applied to hyper-specific situations, like preventing the sale of franchised businesses that are illegal under state law.<sup>36</sup>

But in the author's experience, the power of the stop order extends far beyond its actual issuance. Given the draconian effect of a stop order on a franchisor's business, the mere *possibility* of getting into a dispute with a regulator that has the power to issue a stop order is often more than sufficient to compel compliance with regulatory demands. Accordingly, when faced with an investigation or enforcement action by a regulator, franchisors may make far-ranging concessions to resolve matters, even in instances where the franchisor believes that the regulatory agency's interpretation of the law is incorrect.<sup>37</sup> A corollary of this is that, despite franchising's fifty-plus year his-

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(incomplete registration application); *In re Advance Checking Franchise Dev., Inc.*, 1989 WL 452642 (Wash. Sec. Div. Nov. 2, 1989) (failure to file impound agreement required by registration); *In re Sun Free Enters., Inc.*, 1988 WL 427571 (Wash. Sec. Div. Nov. 16, 1989) (incomplete registration application); *In re Xtreme Clean of the Fox Cities, Inc.*, 2022 WL 22937724 (Wis. Fin. Inst. Jan. 18, 2022) (incomplete registration application); *In re Prontowash USA, LLC*, 2010 WL 2771688 (Md. Sec. Div. July 1, 2010) (failure to renew escrow agreement for initial fees).

34. *In re Why Weight Inc.*, 2004 WL 2884165 (Ind. Div. Sec. Oct. 15, 2004) (failure to disclose principal with criminal felony convictions); *In re Day-By-Day Gourmet, LLC*, 2007 WL 7565071 (Wash. Dept. Fin. Inst. Dec. 31, 2007) (failure to disclose principal's consent order with the securities division).

35. *In re Life Call Sys., Inc.*, 1988 WL 422902 (Ind. Div. Sec. Mar. 22, 1988) (bankruptcy); *In re Dental Support Plus Franchise LLC*, 2014 WL 12907521 (Minn. Dept. Comm. Oct. 28, 2014) (bankruptcy); *In re Burgerim*, 2020 WL 416807 (Wash. Sec. Div. Jan. 14, 2020).

36. See *In re AMK Serv. Corp.*, 1997 WL 469090 (Wash. Sec. Div. Aug. 14, 1997) (issuing stop order after determining, in consultation with the Washington State Gambling Commission, that the proposed franchised business offering would constitute an illegal gambling operation under state law).

37. One such example was the State of Washington's decision to pursue administrative relief against franchise systems that used agreements containing no poach or anti-poaching clauses. Press Release, Office of Wash. Att'y Gen. Robert Ferguson, AG Ferguson's Initiative to End No-Poach Clauses Nationwide Secures End to Provisions at 50 Corporate Chains (Jan. 14, 2019), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-s-initiative-end-no-poach-clauses-nationwide-secures-end-provisions>. Some commentators noted that this effort by the state was likely an unconstitutional overreach. Michael L. Sturm, *The State of Washington's Attempt to Ban Franchise Anti-Poaching Provisions Nationwide Violates Constitutional Limitations on State Power to Regulate National Commerce*, 39 FRANCHISE L.J. 169, 184 (2019). At a minimum, it was a heavy-handed use of state power, given that the state was attempting to enforce a nationwide ban despite the fact that less than two percent of franchised outlets in question were located in the state. See Daniel J. Oates, *Editorial*, 38 FRANCHISE L.J. v, vi (2019). Although franchisors had at least plausible arguments against Washington's attempt to enforce its jurisdiction nationwide, all franchisors in the state eventually caved, entering into consent orders that required removal

tory on the legal stage, surprisingly few court and administrative decisions interpret the scope of regulatory power to impose stop orders. The incentive structure is such that, except in the most egregious of situations, there is little reason for franchisors to fight back when faced with an adverse regulatory action.<sup>38</sup>

Based on the historical review of cases, however, the reality of the stop order appears far less scary than franchisors may typically believe. Although state agencies have the ability to impose far-reaching stop orders for non-compliance, they do not generally appear to use that power.<sup>39</sup> Thus, to the extent that franchisors are inclined to capitulate to regulatory demands out of fear, that fear may not be well-founded. Instead, it appears that franchisors can push back on regulatory demands that franchisors deem unreasonable without substantial concern that their disagreement will result in overly punitive actions by the agency. Of course, the risks of being wrong may be perceived as simply too great.<sup>40</sup>

### C. Practical Tips and Franchisor Remedies for Stop Orders

Faced with the possibility of a stop order, and all the attendant damage to the franchisor's business, a franchisor has a few options to lessen the blow. First, as the old adage goes, "an ounce of prevention is worth a pound of

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of the no-poach provisions, and precluding their use moving forward. *See, e.g.*, Press Release, Office of Wash. Att'y Gen. Robert Ferguson AG Report: Ferguson's Initiative Ends No Poach Practices Nationally at 237 Corporate Franchise Chains (June 16, 2020), <https://www.atg.wa.gov/news/news-releases/ag-report-ferguson-s-initiative-ends-no-poach-practices-nationally-237-corporate> (noting that 237 corporate franchise chains agreed to entry of orders precluding enforcement of no poach provisions). In the author's experience, one of the reasons for this mass capitulation was the mere possibility that a regulator might threaten a stop order for non-compliance (or place an indefinite hold on a registration application), which posed significant risks to established and new brands alike with cessation of all franchise sales until the litigation was resolved. Given the pace of antitrust claims through the court system, that could have been years. With that level of risk, it is not surprising that franchisors elected to comply with Washington's demands.

38. This is not unique to franchising. Many administrative regimes are fine-based, and the cost to challenge agency decisions often far exceeds the applicable fine. Consequently, there is frequently no incentive to litigate issues.

39. The possibility cannot be fully discounted that this assumption is faulty. The absence of any stop orders on mundane regulatory concerns may be the result of franchisors regularly conceding at the mere threat of an adverse action. Given the lengthy history of regulation in this area, however, that seems unlikely. In the author's view, it is more likely that regulators have reasonably reserved their use of stop orders for extreme situations.

40. For years the statistics have proved that, in most instances, football teams would score more points if they ran a play on fourth down rather than punting. Ryan S. Brill, Ronald Yurko & Abraham J. Wyner, *Analytics, Have Some Humility: A Statistical View of Fourth-Down Decision Making*, AM. STATISTICIAN (2025), [https://ryansbrill.com/pdf/statistics\\_in\\_sports\\_papers/Brill\\_Humility\\_TAS.pdf](https://ryansbrill.com/pdf/statistics_in_sports_papers/Brill_Humility_TAS.pdf). Coaches are often loathe to run a fourth-down play however, as it can often lead to calls for their job when the plays are unsuccessful. No amount of quoting the statistics can change that risk avoidant behavior, given the incentive structure. The same principle holds true for franchisors running afoul of regulators. Nobody gets fired for punting.

cure.<sup>41</sup> In many cases, franchisors can probably avoid the issuance of a stop order in the first instance through cooperation and transparency.

A good example case for this proposition is *In re Why Weight Women's Total Fitness, Inc.*, in which California issued a stop order to Why Weight Women's Total Fitness, Inc. (Why Weight) based on, among other things, repeated misrepresentations made in the company's registration application.<sup>42</sup> The principal owner of Why Weight, Ivan Bondy (Bondy), had been deceived into the business enterprise by two charlatans, one of whom, Matthew Craig Rubin (Rubin), had a previous conviction for mail fraud.<sup>43</sup> The California Department of Corporations concluded that Bondy was merely a "patsy," with a "false belief that he had good business acumen."<sup>44</sup> That may have been the ultimate deciding factor in the case, as all the alleged misrepresentations and omissions that led to the stop order were perpetrated by Rubin and the other proponents of the scheme.<sup>45</sup> But had Bondy not been asleep at the wheel, he might have corrected the record in ways that likely would have prevented the stop order. By early October 2003, Bondy owned seventy-five percent of Why Weight.<sup>46</sup> Yet when the company submitted its initial Uniform Franchise Offering Circular (UFOC) application to the State of California later that month, he was not involved in the process and apparently did not review anything.<sup>47</sup> Many of the subsequent problems could have been avoided had Bondy carefully reviewed the UFOC prior to its original submission.<sup>48</sup> Bondy also missed chances to correct these issues. The state sent a comment letter on the UFOC in late October 2003 asking for "numerous technical corrections and explanations."<sup>49</sup> Bondy apparently did not take this request seriously and provided only partial responses to the state's letter.<sup>50</sup> He also failed to take control of the business.<sup>51</sup> By the time the state learned of Rubin's undisclosed mail fraud conviction, it was too late for Bondy to act.<sup>52</sup> California's stop order propagated into other jurisdictions, effectively ending the Why Weight franchise experiment and Bondy's future business prospects.<sup>53</sup>

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41. Letter, Benjamin Franklin, *On Protection of Towns from Fire*, PENN. GAZETTE (Feb. 4, 1735).

42. *In re Why Weight Women's Total Fitness, Inc.*, 2006 WL 6618519, at \*1 (Cal. Dept. Corp. Jan. 4, 2006).

43. *Id.* at \*2, \*6.

44. *Id.*

45. *See id.* at \*2-8.

46. *Id.* at \*4.

47. *Id.*

48. Indeed, the UFOC did not disclose Rubin's involvement in the company, even though he was then running the day-to-day operations of the business. *Id.* at \*5. This alone should have raised red flags, even if Bondy was not aware of Rubin's felony conviction.

49. *In re Why Weight Women's Total Fitness, Inc.*, 2006 WL 6618519, at \*5.

50. *Id.*

51. *Id.*

52. *Id.* at \*6.

53. *See, e.g., In re Why Weight Inc.*, 2004 WL 2884165 (Ind. Div. Sec. Oct. 15, 2004) (noting, in support of issuance of a stop order in Indiana, that the "State of California Business,

*Why Weight* involved egregious conduct, but it underscores the critical need for businesses to seek good counsel and appreciate the gravity of their interactions with regulators. Indeed, many stop orders arise out of franchisors' inexcusable inability to simply respond to requests for information.<sup>54</sup> Simple diligence and timely communication when working with regulators dramatically reduces the likelihood of an adverse regulatory action.

In addition, if vigorous cooperation does not prevent an adverse action (or if companies elect to skip this step), franchisors can contest the imposition of a stop order through administrative proceedings.<sup>55</sup> The specific procedures vary by state, but regulators must generally notify the franchisor of the intent to issue a stop order, and the grounds upon which it is based, upon issuing the order.<sup>56</sup> The franchisor typically can challenge the order in an administrative hearing before the agency.<sup>57</sup> These proceedings generally fall under the state's administrative procedure act,<sup>58</sup> and require that the agency issue findings of fact and conclusions of law following a hearing before an impartial adjudicator, usually an administrative law judge.<sup>59</sup> Given that stop orders typically go into effect before a hearing, there is often provision made for an expedited hearing date, so that the issue can be resolved as quickly as possible.<sup>60</sup> Thus, counsel involved in these proceedings will need to act quickly, conducting expedited discovery, much in the same vein as a preliminary injunction hearing in court.

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Transportation, and Housing Agency, Department of Corporations issued an Order dated June 18, 2004, denying the effectiveness of Respondents' Franchise Registration Application").

54. See, e.g., *In re Cassano's, Inc.*, 1979 WL 42273 (Ind. Div. Sec. July 16, 1979) (issuing stop order only after sending two notification letters asking for correction of deficiencies in franchise application, neither of which the franchisor responded to); *In re Xtreme Clean of the Fox Cities, Inc.*, 2022 WL 22937724 (Wis. Fin. Inst. Jan. 18, 2022) (issuing stop order after sending multiple requests to the franchisor to update information in application, and receiving no response).

55. CAL. CORP. CODE § 31117; HAW. REV. STAT. § 482E-8(b); 815 ILL. COMP. STAT. 705/23; IND. CODE § 23-2-2.5-14(b); MD. CODE ANN., BUS. REG. § 14-222; MINN. STAT. § 80C.12, subdiv. 2; N.Y. GEN. BUS. LAW § 683(7); N.D. CENT. CODE § 51-19-09(2); R.I. GEN. LAWS § 19-28.1-25; S.D. CODIFIED LAWS § 37-5B-44; VA. CODE ANN. § 13.1-562(B); WASH. REV. CODE § 19.100.130; WIS. STAT. § 553.56(1).

56. 1 FRANCHISE & DISTRIB. LAW & PRAC. § 5A:36 (2024); see also sources cited *supra* note 55.

57. See, e.g., WASH. REV. CODE § 19.100.130; *id.* at § 19.100.260 ("The administrative procedure act, chapter 34.05 RCW, shall wherever applicable herein govern the rights, remedies, and procedures respecting the administration of this chapter."). But most statutes also reserve the right for the state to pursue relief in the courts as an alternative to issuance of administrative actions and conducting administrative proceedings. See, e.g., N.Y. GEN. BUS. LAW § 689; WASH. REV. CODE § 19.100.210.

58. See, e.g., WASH. REV. CODE § 19.100.260.

59. See, e.g., WASH. ADMIN. CODE § 10-08-210.

60. CAL. CORP. CODE § 31117 (requiring hearing be set within fifteen days); HAW. REV. STAT. § 482E-8(b) (requiring hearing be set within fifteen days); 815 ILL. COMP. STAT. 705/23 (requiring hearing be set within ten days); MD. CODE ANN., BUS. REG. § 14-222 (requiring hearing be set within fifteen days); MINN. STAT. § 80C.12 (requiring hearing be set within twenty days); N.D. CENT. CODE § 51-19-09 (requiring hearing be set within fifteen days); S.D. CODIFIED LAWS § 37-5B-44 (requiring hearing be set within twenty days); VA. CODE ANN. § 13.1-562(B) (requiring hearing be set as soon as practicable); WASH. REV. CODE § 19.100.130 (requiring hearing be set within fifteen days); WIS. STAT. § 553.56 (requiring hearing be held within sixty days).

Lastly, in the event of an adverse ruling by the administrative law judge, the franchisor can appeal the agency's determination, usually to a court of law that is independent from the agency.<sup>61</sup> Sometimes that undertaking first requires exhaustion of administrative remedies before the agency,<sup>62</sup> such as an appeal to the agency board or head.<sup>63</sup> On appeal, review is typically confined to assessing the administrative law judge's legal conclusions, and the facts before the court are limited to those introduced into the record at the administrative level.<sup>64</sup> Thus, developing a full record is critical to preserving a complete right of review. Ultimately, a franchisor that seeks to challenge agency action through the administrative process should be sure to retain counsel that is familiar with the rules and procedures that apply to administrative actions.

### Conclusion

In the world of decision-making, there are high probability, low consequence risks, and low probability, high consequence risks. Stop orders fall decidedly into the latter camp. But given state regulators' historical use of their stop order powers in only extreme circumstances, and the alternatives for avoiding (or overturning) them altogether, franchisors should be more confident in their ability to negotiate reasonable outcomes in regulatory disputes. The stop order need not be the death penalty for a system; rather, it is a cautionary warning to take seriously the regulators' role in policing the franchise business model, and accord them the requisite respect, deference, and transparency that their position requires.

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61. See WASH. REV. CODE § 34.05.542(2) (providing for a right of judicial review of an order of an administrative law judge within thirty days of the entry of the order).

62. See WASH. REV. CODE § 34.05.534 ("A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review . . .").

63. WASH. ADMIN. CODE § 10-08-211(1)-(4) (providing for a petition for review of the administrative law judge's ruling at the hearing to the agency head).

64. See WASH. REV. CODE § 34.05.558.